

Maricopa County Justice of the Peace Bench Comments

Regarding the Petition to Amend Arizona Rule of Civil Procedure 4.1

The Maricopa County Justice Court Bench strongly opposes the changes recently proposed to Rule 4.1 of the Arizona Rules of Civil Procedure. Specifically, the rule change would amend Rule 4.1 to permit service on the registered vehicle owner by first class mail, of complaints relating to civil traffic violations captured by a photo enforcement system.

While it appears that the statewide photo enforcement program will not receive a contract renewal beyond July 2010, given that this is an election year, reimplementation under a newly elected governor cannot be discounted. Effective action to counter this proposed rule change must be considered.

Our arguments opposing this modification are listed below:

Efficiency will be improved – to the contrary, efficiency will be adversely impacted by the implementation of this rule. Maricopa County, as well as the State of Arizona in general, has a very transient population in-which people frequently change addresses without adequately notifying the MVD as required by law. In addition, these statutory requirements for address change notification are not adequately enforced by law enforcement. Since Arizona driver's licenses, in most cases, do not require renewal for many years, and because drivers do not routinely comply with the notification of change of address requirements, the accuracy of the MVD databases are problematic.

To respond to these inquiries court staff would need to be assigned to this task, thus necessarily neglecting other required court tasks. In the Maricopa County Justice Courts no additional court staff has been authorized for Fiscal Year 2011; therefore, the additional problem resolution and processing tasks would certainly fall to existing staff. There are no efficiencies that accrue to justice courts in this modification.

Modification comports with Arizona Statutes and Arizona Rules of Civil Procedure – Recently, and ironically, the Maricopa County Justice Court Bench, Legislative Committee and Justice Court Administration spent several months meeting with all of the stakeholders (Justice

Courts, Department of Public Safety, Redflex Personnel and Lobbyists) involved in the statewide photo enforcement program in an effort to develop statutory modifications improving the adjudication process as it affects justice courts. This group of stakeholders expressly rejected the mail service concept and chose not to include it in the proposed legislation. When Senate Bill 1018 (SB-1018) was passed by both houses of the Legislature and signed by the Governor, the provision of personal service had been expressly added to the statute to ensure mail service was not used for photo enforcement citations. Clearly, this modification does not comport with SB-1018 which will become law before this rule modification request can be approved.

In addition, this modification does not comport with the Arizona Rules of Civil Procedure. First class mail delivery is not a sure method of the defendant's receipt of a civil traffic citation particularly when the process relies on an inaccurate address database. It also does not offer any verification of service. The current rules already recognize these inherent limitations of mail service. That, presumably, is why mail service exists as an alternative and not a primary means of service. If first class mail were completely reliable, there would be no reason for personal, registered, or certified mail service to exist. In many instances, the first notification of the issuance of a photo enforcement citation would be when the defendant received notification of a registration hold from MVD.

Modification for photo enforcement service will save governmental entities and citizens millions of dollars of personal service costs – In the case of the Maricopa County Justice Courts, the process will increase the Maricopa County court operations costs by millions of dollars because staff will have to be increased to deal with the hundreds of thousands of alleged violators who have not received previous notice of their violation and have arrived at the court to learn why they cannot re-register their vehicle or have been subjected to sanctions for a violation/s they were not aware of.

These alleged violators will also request hearings regarding proof of service as well as for the violation itself. Many defendants would require hearings just to prove: (1) they did not receive notice because they no longer live at the address of record; (2) they no longer own the vehicle in question; or (3) to try to prove that the MVD database information is in error.

Modification is appropriate given the punishment for a photo enforcement violation is often limited to a small monetary penalty – this argument is not only incorrect, it is somewhat arrogant. The current sanctions for a state photo enforcement violation that would proceed to

default because the driver was not aware of the violation are listed below:

Original Civil Penalty	\$181.50
Court Processing Fee	20.00
Default Fee	30.00
Time Payment Fee	20.00
FARE costs	35.00
Collection (19%)	<u>44.00</u>
TOTAL	\$330.50

The justice courts simply do not agree that a monetary penalty of more than \$300 dollars is small. A penalty of this size may represent a house payment or a car payment to many users of the justice court system. The current economic situation exacerbates the impact that such a sanction has on individuals who are trying to just get by during an unemployed period or live at subsistence level.

All due process considerations are satisfied via mail service – the most basic requirement for due process is notice and notice by first class mail does not adequately fulfill that requirement. As noted above that deficiency is why this method of service is not the current preferred method.

For this method of service to meet due process considerations, at least, three actions must be accomplished: (1) legislation should be passed that advises all Arizona drivers and vehicle owners that they are responsible for photo enforcement violations that occur involving vehicles that are registered in their name; (2) mandatorily require vehicle owners and drivers to update their addresses; and, (3) provide for an effective enforcement mechanism that ensure drivers and owners comply with the requirement to advise MVD of their current address.

These suggested changes would ensure database accuracy. While Arizona statutes do require owners and drivers to provide address changes, there are currently only minimal enforcement mechanisms to ensure the proper reporting of changes of address.

Mailed service of process will bring Arizona in line with other jurisdictions that allow similar processes in photo enforcement cases – the implication that Arizona should fall into line because half of the other states have chosen to use mail service can only be an impetus to join that group because there would be an assumption that somehow this state is out of the mainstream. That is not the case. This issue is much larger than a procedural rule change. A review of the other states

will demonstrate that those states allowing mail service was accomplished in the majority through a public policy decision of their legislatures not through a procedural rule change in the courts.

If the Arizona Supreme Court were to authorize this change, it would affect more Arizona citizen than any other court action in years. Just in Maricopa County, photo enforcement citations will total nearly 400,000 this fiscal year. If Maricopa County represents 60% of the state, then statewide, photo enforcement citations could total nearly 700,000 citations in a single year. With a population of approximately six million, a tenth of state's total population could be affected in any given year. With an inaccurate database, virtually hundreds of thousands of Arizona citizens could be adversely impacted by this proposal.

The proponents of this rule modification suggested a similar change to SB-1018 as was mentioned earlier in these comments. During the negotiations of the language to be included in the proposed bill, a majority of the stakeholders rejected the concept. Subsequently, the proponents filed this modification request. Later during the legislative session, the proponents asked the stakeholders to extend the time for filing of a civil traffic citation (ARS 28-1592 B (2)) from 90 days to 120 days because the new language in SB-1018 required service before filing in the court. An agreement was struck to extend the time for filing to 120 days in exchange for the proponents withdrawing this rule modification. The stakeholders changed the proposed language to accommodate the 120 day timeframe; however, the proponents did not withdraw the proposed rule modification.

This rule modification is an attempt by the proponents to make a significant public policy change that will eventually affect millions of Arizona citizens by convincing the court to modify the Rules of Civil Procedure because they have not been able to successfully change public policy through the legislative process.

For the foregoing reasons, we urge the Court not to approve this recommended modification.

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